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December 7, 1959

JOHN VANLANDINGHAM

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Hon. George F. Senner, Jr.
Chairman, Arizona Corporation Commission
The Capitol Annex
Phoenix, Arizona

Dear Mr. Senner:

This will acknowledge receipt of your letter of November 30th in which you request the necessary steps to be taken where a claim arises through an over-payment of penalty or an error in a book transaction and it is proper for an administrative adjustment to be made. Such claim may be paid as set out in the following statutes:

"§35-181. Presentation, approval and payment of claims and payrolls

A. All claims against the state for obligations authorized, required or permitted to be incurred by any state officer or agency, shall be paid only in the following manner:

The claimant shall present an itemized claim, sworn to by him and approved by the head official of each office or state agency under which the obligation was incurred, or by some other person thereof, if expressly authorized to approve the claim. Such claim shall be so presented within one year after the claim accrues, and not afterward. The claim shall then be presented to the state auditor and, if approved, the auditor shall draw his warrant therefor on the state treasurer, who shall pay it when countersigned by the governor but only from the appropriation made therefor.

B. The head of each budget unit shall prepare and present payrolls to the state auditor. The budget head shall certify on each payroll claim that the persons whose names appear have performed the services required by law, and the amount opposite the name is due and unpaid. Each employee shall sign a payroll claim which acknowledges the amount opposite his name is due for services rendered and shall certify that he is a citizen of the United States.

C. No claim shall be presented to the state auditor for railroad mileage scrip books, and no warrants shall be issued by the state auditor in payment therefor.

"§35-191. Administrative adjustment; refunds; presentation and disposition of claims; exemption

A. A claim against the state arising out of contractual relations which has been disallowed because of a technical defect in filing, including failure to meet the requirements as to signature, notarization, itemization or supporting information, or which has not been paid because of failure to file within the time prescribed by law, or because of any other technical defect not affecting the validity thereof or the contractual liability of the state, shall be subject to administrative adjustment as provided in this section.

B. If a claim does not exceed one thousand dollars and was covered by an appropriation in the budget year in which the claim arose, the state auditor, upon approval of the claim, shall draw his warrant in payment of the claim and the warrant shall be paid out of the fund to which the unused appropriation reverted.

C. If a claim for an amount in excess of one thousand dollars is approved by the state auditor, he shall give the claimant a certificate of the amount for which the claim is approved, and report the transaction to the legislature, attaching thereto the evidence relating to the claim and the grounds for approval thereof.

D. A claim for refund on any fee, license, permit or erroneous payment, the revenue from which has been placed in any earmarked fund, or the general fund, shall be subject to administrative adjustment if no specific provision for refund is prescribed by law. If a claim for refund is approved, payment thereof shall be made out of any unexpended and unappropriated balance in the earmarked fund, or general fund.

E. All claims falling within the provisions of this section shall be presented to the state auditor in the manner prescribed by law and the rules and regulations of the auditor for presentation and audit of claims.

F. The provisions of this section shall not apply to a claim for damages for injury to a person or property."

We believe that the claim to which you refer as being an over-payment of penalty on annual report fees to the Corporation Commission can be paid in this manner.

It is our opinion that the claim described in your letter would be one handled in the usual course through your department and if properly itemized and presented, and it is a proper claim

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which should be approved, then the head of the department approves the claim and sends it on to the auditor, to be paid as an administrative adjustment. The above statutes set out the proper fund to which it should be applied.

We might add that we have had several inquiries relative to the over-payment of penalty in accordance with the Attorney General's opinion issued on this matter, and we have suggested to all of them that this procedure be followed.

If there is any further question, please advise.

Sincerely,

WADE CHURCH
The Attorney General

JOHN VANLANDINGHAM
Assistant Attorney General

JV:lmh

cc - Margaret Griffith, Deputy Auditor
Wm. P. Lutfy

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